IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4484 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHCHANDRA B MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4484 of 2001

MR SAURABH J MEHTA for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondents No. 1-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/01/2002

ORAL JUDGEMENT

#. Rule. Ms.Harsha Devani, learned AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing

today.

#. The petitioner, who was initially appointed on the post of Work-charged Clerk in the year 1963, was subsequently promoted to the post of Junior Clerk on 19.8.1965 and on the said post, he worked till 22.11.1978. Thereafter, he was again promoted on the post of Senior Clerk on 23.11.1978. He was subsequently promoted as Store Keeper on 9.10.1979. It seems that the petitioner was given benefit of higher pay-scale on the basis of the Government Resolution dated 5.7.1991 and at that time he was given the benefit of higher pay-scale of Rs.1400-2600. It seems that the said scale was given as per the schedule annexed with the said resolution. Thereafter, the petitioner demanded the pay-scale which was meant for the Store Superintendent i.e. Rs.1640-2900 and the same was sanctioned on 6.1.1996 with effect from 21.12.1991. However, subsequently the department realised the mistake that the petitioner was not required to be given the pay-scale of Rs.1640-2900 and he was required to be given the pay-cale of Rs.1400-2600, the said mistake was rectified and ultimately the petitioner was placed in the pay-scale of Rs.1400-2600. Thereafter, the order of recovery was also passed. The said decision is challenged by the petitioner by filing this petition.

#. It is not in dispute that before passing the impugned order which is at Annexure-A - page 21, the petitioner was not given any hearing and without hearing the petitioner, his pay-scale was reduced from 1640-2900 to Rs.1400-2600. It was also decided to initiate the recovery and that too also without hearing the petitioner.

#. Since the aforesaid order was passed without hearing the petitioner, only on this ground the impugned order is required to be quashed and set aside.

#. Similar view is taken by this Honourable Court in Special Civil Application No.544 of 2000 which is at page 27 of the compilation.

#. In view of the aforesaid position, the petition is allowed. The impugned order is quashed and set aside. It will be open for the authority to pass appropriate order after hearing the petitioner. It is clarified that this court has not expressed any opinion on the merits of the matter one way or the other. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)